

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID Nos. 1607009547,
)	1609017759, and
ANTHONY J. STANLEY,)	1701013434
)	
Defendant.)	
)	

Submitted: October 16, 2018
Decided: January 22, 2019

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED.**

Barzilai K. Axelrod, Esquire, Deputy Attorney General, Department of
Justice, Wilmington, Delaware, Attorney for the State.

Anthony J. Stanley, Howard R. Young Correctional Institution, Wilmington,
Delaware, *pro se*.

PARKER, Commissioner

This 22nd day of January 2019, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND, FACTS AND PROCEDURAL HISTORY

1. On August 10, 2016, Defendant Anthony J. Stanley was arrested on Case No. 1607009547. Defendant Stanley, along with six co-defendants entered a Wawa and while some engaged in a physical altercation with the cashier, others stole merchandise from the store. The entire incident was captured on video surveillance. Defendant Stanley was indicted for Robbery Second Degree, Conspiracy Second Degree, and Offensive Touching.
2. On September 27, 2016, Defendant Stanley was arrested on Case No. 1609017759. In that case, Defendant Stanley confronted a victim. The victim concerned about his safety, left in a vehicle and Stanley followed. Stanley drove next to the victim's vehicle and his co-defendant, his front seat passenger, Walike Parham shot at the victim with a firearm from the vehicle. After the shooting, Stanley drove off and fled the scene with his co-defendant.
3. As a result of the September 27, 2016 incident, on November 21, 2016, Stanley was indicted on two counts of Reckless Endangering First Degree, two counts of Possession of a Firearm During the Commission of a Felony ("PFDCF"), one count of Conspiracy Second Degree and one count of Criminal Mischief under \$1000.

4. As these two cases remained pending, on January 23, 2017, Stanley was arrested on Case No. 1707013434. Stanley showed up to buy a cell phone from the victim. Instead of purchasing the phone, Stanley tried to rob the victim with what would turn out to be a BB gun. A scuffle occurred, the victim wrestled the gun away, and Stanley fled. Stanley was facing Attempted Robbery First Degree and related charges when this case was resolved pre-indictment as part of a global plea.
5. In Case No. 1609017759, the car shooting case, Stanley failed to appear at a final case review on April 17, 2017, and a *capias* was issued for his arrest. Stanley again failed to appear for his scheduled trial date on May 2, 2017. Another *capias* was issued for his arrest. Four months later, on September 19, 2017, the outstanding *capiases* were returned.
6. On October 16, 2017, Stanley entered into a global plea to resolve all three of these cases. He pled guilty to one count of Reckless Endangering First Degree, one count of PFDCF, two counts of Conspiracy Second Degree, one count of Attempted Robbery Second Degree, and one count of Robbery Second Degree. As part of the plea agreement, the State agreed that at sentencing it would recommend not more than five years of unsuspended Level

V time.¹ Also as part of the plea agreement, all the remaining charges were dismissed.²

7. If Stanley had proceeded to trial on all the charges in these three cases, he was facing a minimum sentence of six years prison time (three years for each of the PFDCF charges) and a maximum sentence of well-over 44 years of Level V incarceration. On the charges to which he pled guilty, Stanley was facing a minimum sentence of three years and a maximum sentence of 44 years of Level V incarceration.

8. As part of the plea agreement, the parties jointly requested that a pre-sentence investigation be conducted prior to sentencing.³

9. On January 5, 2018, following a pre-sentence investigation, Stanley was sentenced. Although as part of the plea the State recommended that Stanley be sentenced to five years of unsuspended Level V time, after Stanley's counsel's presentation and Stanley's allocution expressing regret, remorse and apologies, the court downwardly departed from that recommendation and sentenced Stanley to a total of four years of unsuspended Level V time. Stanley was sentenced to three years of unsuspended Level V time, the minimum mandatory, on the PFDCF charge, and six months of unsuspended

¹ October 16, 2017 Plea Agreement.

² October 16, 2017 Plea Agreement.

³ October 16, 2017 Plea Agreement.

Level V time for each of the two robberies. Following the four years of unsuspended Level V time, Stanley was sentenced to decreasing levels of probation.

10. Stanley did not file a direct appeal to the Delaware Supreme Court.

11. On March 22, 2018, Stanley filed a motion for reduction of sentence. In that motion, he requested that his Level V time be reduced from four years to three years. By Order dated April 17, 2018, the Superior Court denied the motion on the basis, *inter alia*, that the sentence was imposed pursuant to the Plea Agreement agreed to by Stanley and because the sentence was appropriate for all the reasons stated at the time of sentencing.⁴

STANLEY'S RULE 61 MOTION

12. Stanley filed the subject Rule 61 motion on June 11, 2018.

13. Following the filing of Stanley's Rule 61 motion, the record was enlarged and Stanley's trial counsel submitted an Affidavit responding to Stanley's ineffective assistance of counsel claims. The State thereafter filed a response and Stanley filed a reply thereto.⁵

14. In the subject motion, Stanley raises two claims. The first is a claim that his counsel was ineffective in his handling of the plea and in his handling of

⁴ April 17, 2018 Order denying Defendant's Motion for Reduction/Modification of Sentence

⁵ Super.Ct.Crim.R. 61(g).

the sentencing. The second claim is that there was no physical evidence to convict him of the PFDCF charge and no weapons were found.

15. For the reasons discussed below, Stanley's second claim is procedurally barred, both of his claims were waived, and both are without merit.

Stanley's Claim of Lack of Physical Evidence is Procedurally Barred

16. Prior to addressing the substantive merits of any claim for postconviction relief the court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.⁶ If a procedural bar exists, then the claim is barred, and the court should not consider the merits of the postconviction claim.⁷

17. Superior Court Criminal Rule 61(i)(3) requires that Stanley raise his claims, with the exception of his ineffective assistance of counsel contentions, on direct appeal.⁸ Stanley's ineffective assistance of counsel claim is not procedurally barred by Rule 61(i)(3) because a Rule 61 motion is the appropriate vehicle for raising these claims.⁹

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁷ *Id.*

⁸ See, *Malin v. State*, 2009 WL 537060, at *5 (Del.Super. 2009); *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

⁹ *Id.*

18. The claim raised herein that there was no physical evidence to convict him of the PFDCF charge and no weapons found is procedurally barred for the failure to raise this claim on direct appeal.

Stanley's Claims Were Waived Upon Entry of His Guilty Plea

19. In addition to Stanley's second claim being procedurally barred, Stanley's claims were also waived upon the entry of his guilty plea.

20. A defendant is bound by his answers on the plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.¹⁰ In the subject actions, the Truth-in-Sentencing Guilty Plea Form, Plea Agreement and plea colloquy reveal that Stanley knowingly, voluntarily and intelligently entered a guilty plea to the charges for which he pled guilty and was sentenced.

21. At the time of the plea, Stanley's counsel represented to the court that he had reviewed the plea agreement and Truth-in-Sentencing Guilty Plea Form with Stanley.¹¹ He represented that they had discussed the nature of the charges and possible defenses thereto and also discussed the range of penalties that Stanley was facing.¹² Counsel represented that Stanley understood that

¹⁰ *Evans v. State*, 2016 WL 6196456 (Del.); *State v. Harden*, 1998 WL 735879, *5 (Del.Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del.Super. 2008).

¹¹ October 16, 2017 Plea Transcript, at pg. 4.

¹² October 16, 2017 Plea Transcript, at pg. 4.

Stanley was subject to at least a three-year minimum mandatory Level V prison term on the PFDCF charge, and that while the State was agreeing to cap its sentencing recommendation to five years at Level V, Stanley understood that the court could impose up to 44 years of incarceration, if it chose to do so.¹³

22. Stanley personally represented to the court that he had read and understood the Truth-in-Sentencing Guilty Plea Form and the plea agreement.¹⁴ Stanley represented that nobody was forcing him to enter his plea.¹⁵ Stanley represented that he was freely and voluntarily pleading guilty to the charges listed in the plea agreement. Stanley represented that he was not being threatened or forced to do so by his attorney, by the State, or by anyone else.¹⁶ Stanley represented to the court that he understood the charges and the potential penalties he was facing, and that he was pleading guilty to the charges set forth in the plea agreement.¹⁷

23. During the plea colloquy and in the Truth-in-Sentencing Guilty Plea Form, Stanley represented that he read and understood that by pleading guilty he was waiving his constitutional rights: to have a speedy trial by jury; to be presumed innocent until the State proves each and every part of the charges

¹³ October 16, 2017 Plea Transcript, at pg. 4.

¹⁴ October 16, 2017 Plea Transcript, at pgs. 6-7.

¹⁵ October 16, 2017 Plea Transcript, at pg. 7.

¹⁶ October 16, 2017 Plea Transcript, at pg. 7.

¹⁷ October 16, 2017 Plea Transcript, at *7-11.

against him beyond a reasonable doubt; to hear and question the witnesses against him; to present evidence in his defense; to testify or not testify; and to appeal, if convicted.¹⁸

24 Stanley represented that he understood that he was waiving each and every one of those rights by pleading guilty.¹⁹

25. Stanley represented to the court that he had not received any promises by anyone as to what his sentence would be. Stanley represented that he was satisfied with his counsel's representation, that his counsel fully advised him of his rights, and that he understood the consequences of entering into his guilty plea.²⁰

26. Stanley admitted his guilt to the charges for which he pled guilty, including the PFDCF charge.²¹ Only after finding that Stanley's plea was entered into knowingly, intelligently and voluntarily, did the Superior Court accept Stanley's plea.²²

27. Stanley has not presented any clear, contrary evidence to call into question his prior testimony at the plea colloquy, Plea Agreement or answers

¹⁸ October 16, 2017 Plea Transcript, at * 7-8; Truth-in-Sentencing Guilty Plea Form dated October 16, 2017.

¹⁹ October 16, 2017 Plea Transcript, at *7-8; Truth-in-Sentencing Guilty Plea Form dated October 16, 2017.

²⁰ October 16, 2017 Plea Transcript, at *7-10; Truth-in-Sentencing Guilty Plea Form dated October 16, 2017.

²¹ October 16, 2017 Plea Transcript, at *9.

²² October 16, 2017 Plea Transcript, at *11.

on the Truth-in-Sentencing Guilty Plea Form. As confirmed by the plea colloquy, Plea Agreement and Truth-in-Sentencing Guilty Plea Form, Stanley entered his plea knowingly, intelligently and voluntarily.

28. Since Stanley's plea was entered into voluntarily, intelligently and knowingly, Stanley waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.²³ Stanley's valid guilty plea waived any right to test the strength of the State's evidence, the right to hear and question witnesses and to present evidence in his own defense, and the right to appeal, if convicted.

29. Stanley's claims presented herein, including those alleging ineffective assistance of counsel, stem from allegations of defects, errors, misconduct and deficiencies which existed at the time of the entry of the plea. Stanley's claims were waived when he knowingly, freely and intelligently entered his plea.²⁴

²³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

²⁴ See, *Mills v. State*, 2016 WL 97494, at *3 (Del.); *Day v. State*, 2011 WL 3617797 (Del.) (claim that counsel was ineffective for failing to file a suppression motion was waived when defendant voluntarily entered his guilty plea, since voluntary guilty plea waives any claims of error occurring prior to the entry of the plea); *Hickman v. State*, 1994 WL 590495 (Del.).

Stanley's Claims Are Without Merit

30. In addition Stanley's claims being procedurally barred and waived, all of Stanley's claims are also without merit.

Insufficiency of Evidence Claim is Without Merit

31. As to Stanley's second claim, that there was no physical evidence and that he did not commit the PFDCF charge because no weapons were found, Stanley could have rejected the plea agreement and elected to go to trial and put the State to its burden of proof. He could have challenged the sufficiency of the evidence.

32. Defense counsel, in his Affidavit in response to Stanley's Rule 61 motion, represented that prior to Stanley entering into his plea, trial counsel had a lengthy conversation with him about the plea offer, the evidence supporting the charges against him, and possible defenses thereto. Stanley has specific questions about his ability to be successfully prosecuted for PFDCF if he never actually had a firearm in his possession.

Defense counsel explained the legal theory of accomplice liability to Stanley and thereafter Stanley decided to accept the plea.²⁵

²⁵ Affidavit of Trial Counsel in Response to Rule 61 Motion, at pg. 4; *See*, 11 *Del. C.* §§ 271, 275 (a person indicted for committing an offense may be convicted as an accomplice to another person guilty of committing the offense).

33. In this action, Stanley was the driver of the vehicle who chased the victim. As he approached the victim's vehicle, his passenger shot at the victim's vehicle. Stanley then drove away from the scene. When examining the victim's vehicle, the police were able to see where the bullets had struck it. Even if the matter had proceeded to trial, a firearm need not be recovered for a defendant to be convicted of having possessed a firearm during the commission of a felony.²⁶

34. Stanley admitted his guilt to the PFDCF charge at the time of his plea. Stanley waived his trial and his right to contest the charges against him when he knowingly, voluntarily and intelligently entered his plea. There is no merit to this claim.

Ineffective Assistance of Counsel Claim As To Plea is Without Merit

35. Turning now to Stanley's ineffective assistance of counsel claim, Stanley contends that his counsel never discussed his case with him, and that he did not feel fully prepared at his sentencing.

36. Addressing first Stanley's contention that his counsel never discussed his case with him prior to his entering into the plea.

37. In order to prevail on an ineffective assistance of counsel claim in the context of a plea challenge, Defendant must demonstrate that (1) his defense

²⁶ *Cruz-Urvina v. State*, 2015 WL 5824796, *2 (Del. 2015).

counsel's conduct fell below an "objective standard of reasonableness," and (2) the deficient performance prejudiced the defense.²⁷ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.²⁸

38. In the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.²⁹ The burden of proving ineffective assistance of counsel is on the defendant.³⁰ Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.³¹

39. Stanley's contention, in his Rule 61 motion, that he had not adequately discussed this case with his counsel prior to taking the plea is directly at odds

²⁷ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

²⁸ *Id.* at 687-88, 694.

²⁹ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Hickman v. State*, 1994 WL 590495 (Del.) (applying *Strickland* to guilty pleas).

³⁰ *Oliver v. State*, 2001 WL 1751246 (Del.).

³¹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

with the representations that Stanley made to the court at the time he accepted his plea. Prior to Stanley accepting his plea, on the day of the plea, Stanley's counsel represented to the court that they had fully discussed the nature of the charges, the possible defenses, and the potential sentences that Stanley was facing.³²

40. At the time of his plea, Stanley personally represented to the court he was voluntarily entering into his plea, that he was fully advised of his rights, and that he was satisfied with his counsel's representation.

41. Stanley's guilty plea represented a rational choice given the pending charges, the evidence against him, and the possible sentence he was facing. If convicted of all the charges at trial, he was facing a minimum sentence of six years of incarceration and a maximum sentence of over forty-four years of incarceration. As part of the plea, the State agreed to recommend a five-year prison sentence. The five-year prison term recommendation was less than the six-year minimum prison term he would be facing if convicted at trial.

42. In that same vein, in his Affidavit in response to Stanley's Rule 61 motion, trial counsel reiterates that he had discussed the pending matters with Stanley on multiple occasions and that they had spoken at length about the plea offer and the charges against him.³³

³² October 16, 2017 Plea Transcript, at pg. 4.

³³ Affidavit of Trial Counsel in Response to Rule 61 Motion, at pg. 5.

43. Stanley's trial counsel was not deficient in any regard in his handling of the plea and Stanley has not established any actual prejudice resulting therefrom. Stanley would not have rejected the plea and proceeded to trial in this case in which the plea capped the State's sentence recommendation to a five-year prison term, and had he proceeded to trial and was convicted, he was facing a minimum of a six-year prison sentence and, in all likelihood, a much greater sentence. This claim is without merit.

44. Stanley has not presented any clear, contrary evidence to call into question his prior testimony at the plea colloquy or answers on the Truth-In-Sentencing Guilty Plea Form. Stanley has not sustained his burden of demonstrating that his counsel rendered ineffective assistance in any respect. Stanley's claim that he never adequately discussed his plea with his counsel is without merit.

Ineffective Assistance of Counsel Claim as to Sentencing is Without Merit

45. Stanley claims that his counsel was ineffective as to his sentencing. Stanley claims that he was promised his sentence would not exceed three years. Stanley's counsel, in his Affidavit, contends that he was ineffective for not hiring a mitigation specialist and providing a mitigation report to the court at sentencing. Counsel contends that had a mitigation report been provided he could have effectively argued that only the three-year mandatory period of incarceration related to the firearm offense should have been imposed.

Stanley's counsel further contends that such failure also prevented counsel from effectively preparing Stanley for his allocution before the sentencing court.³⁴

46. Despite Stanley's, and Stanley's counsel's contention to the contrary, counsel was not deficient in any regard at sentencing. In fact, counsel did an outstanding job in his presentation of the mitigating evidence on Stanley's behalf, and Stanley did a good job during his allocution. Although the plea agreement provided that the State would recommend a five-year prison sentence, and although courts are generally inclined to honor the State's sentence recommendations³⁵, Stanley's counsel and Stanley were so effective that the court departed from the State's sentencing recommendation and actually imposed a lesser sentence. Although the State recommended a five-year prison sentence, the court imposed only a four-year prison sentence.

47. Prior to sentencing, by the joint agreement of the parties, a full presentence investigation was performed which addressed Stanley's background and the subject offenses.³⁶ At sentencing, the State recommended a five-year prison term. The State emphasized that, as noted within the presentence report, Stanley was 20 years old at the time of sentencing and that

³⁴ Affidavit of Trial Counsel in Response to Rule 61 Motion, at pg. 6.

³⁵ *Harden v. State*, 180 A.3d 1037, 1049-1050 (Del. 2018).

³⁶ January 5, 2018 Sentencing Transcript, at pg. 2.

his juvenile adjudications demonstrated a pattern of escalation. The State further emphasized that the three subject cases occurred shortly after his last juvenile adjudication.³⁷ The State noted that Stanley's co-defendant in the car shooting case also took a plea and received a four year prison sentence. Stanley and his co-defendant presented with somewhat similar charges and had similar backgrounds. Even though Stanley's co-defendant was the shooter, the co-defendant contended that it was Stanley, the driver, who told him to shoot at the car two times in an aggressive manner, and that the co-defendant did not want to, so he pulled the gun out and shot towards the side of the vehicle.³⁸

48. The State advised the court that although Stanley's co-defendant received a four year prison sentence, it was requesting a five-year prison term for Stanley because Stanley had two additional robberies that were part of his plea.³⁹

49. Stanley's counsel made a well-reasoned argument, supported by the presentence investigation report, that Stanley's background and possible mental health issues should be mitigating factors.⁴⁰ Stanley's counsel pointed out that the co-defendant's statements that Stanley directed him to shoot at the car were just untested statements that had not been subjected to cross-

³⁷ January 5, 2018 Sentencing Transcript, at pgs. 2-5.

³⁸ January 5, 2018 Sentencing Transcript, at pgs. 2-5.

³⁹ January 5, 2018 Sentencing Transcript, at pgs. 2-5.

⁴⁰ January 5, 2018 Sentencing Transcript, at pgs. 7-10.

examination. Counsel pointed out that Stanley has been fully forthcoming and had accepted responsibility for the offenses at issue. Counsel added that the mitigating factors coupled with the fact that his girlfriend was expecting their first child, should all be taken into consideration and that a three-year minimum mandatory sentence should be imposed.⁴¹

50. Stanley then addressed the court. He apologized for his actions, accepted responsibility and expressed remorse.⁴²

51. After full consideration of everything that was presented, the court did not accept the State's five-year sentence recommendation, but downwardly departed from it, and sentenced Stanley to a lesser sentence, a four-year prison term.

52. In order to establish ineffectiveness of counsel at sentencing, Stanley must establish a sufficient reasonable probability that but for counsel's error, the sentencing judge would have been swayed to decide the defendant's sentence differently.⁴³ A determination must be made as to whether there is a reasonable probability that, had counsel fulfilled his advisory obligations, the defendant would have received a shorter sentence.⁴⁴

⁴¹ January 5, 2018 Sentencing Transcript, at pgs. 7-10.

⁴² January 5, 2018 Sentencing Transcript, at pgs. 10-11.

⁴³ *Harden v. State*, 180 A.3d 1037, 1039-40 (Del. 2018),

⁴⁴ *Harden v. State*, 180 A.3d 1037, 1050 (Del. 2018).

53. First, as to Stanley's contention that he was promised a three-year prison term, there is no merit to this contention. Stanley knew at the time he entered into his plea, he was facing a sentence range of between 3-44 years and that the State would be recommending a five-year prison sentence. At the time of his plea, Stanley represented to the court that nobody had made any promises as to what his sentence would be.⁴⁵ Since sentencing courts generally accept the State's sentencing recommendations,⁴⁶ Stanley would, in all likelihood, have expected a five-year prison term although there was no guarantee that the court would have accepted the State's sentencing recommendation.

54. Moreover, any contention that Stanley would not have accepted the plea if he knew he was going to receive a four-year prison sentence is baseless. Stanley knew that the State would be recommending a five-year prison term. Had he not accepted the plea and proceeded to trial, Stanley was facing a minimum sentence of at least six-years, since there were two counts of PFDCF, not just one, with a minimum sentence of three-years for each count if convicted. Stanley was facing a maximum sentence of well over 44 years of prison time.

⁴⁵ October 16, 2017 Plea Transcript, at pgs. 5-11; Truth-in-Sentencing Guilty Plea Form dated October 16, 2017.

⁴⁶ *Harden v. State*, 180 A.3d 1037, 1049-50 (Del. 2018)

55. Stanley does not seem to understand that if he had not accepted the plea deal, he would be facing all the charges from the three subject cases including both counts of PFDCF. It was only because Stanley accepted the plea that one of the counts of PFDCF, and a number of the other charges, were dismissed. In all likelihood, he would have received a far greater sentence, if convicted at trial, since he would not have been credited with an early acceptance of responsibility and would be facing a number of additional charges.

56. Stanley's present contention that he was promised a three-year prison term is contrary to his prior representations at the plea colloquy and is without merit. Moreover, any contention that Stanley would not have accepted the plea if he knew he would receive a four-year prison term and would have instead proceeded to trial, is also unsupported by the record and is without merit.

57. Turning now to trial counsel's contention that he subjectively believed he was ineffective for not having obtained a mitigation expert report. This contention is also without merit. While trial counsel's practice may be to obtain a mitigation expert report, there is no such requirement that a mitigation specialist be retained in serious non-capital cases as an invariable requirement of effective representation.⁴⁷ The present practice of criminal law does not dictate that a mitigation expert should be hired in non-capital cases.⁴⁸

⁴⁷ *Williams v. State*, 110 A.3d 550, 551 (Del. 2015).

⁴⁸ See, *State v. Williams*, 2014 WL 2536992, * 6-7 (Del.Super.).

58. In addition, neither trial counsel nor Stanley has established any actual prejudice as a result of not having obtained a mitigation expert report. Neither trial counsel nor Stanley have alleged, let alone established, that there was anything about Stanley's background that was not already known by the court, that would have been brought to the court's attention had a mitigation report been provided, and that would have materially changed the sentencing.

59. Counsel was not deficient for not having provided a mitigation expert report, and there has been no showing of any actual prejudice as a result thereof. Neither prong of *Strickland* has been met.⁴⁹ In this case, neither trial counsel nor Stanley have asserted any additional information that was not already contained in the presentence report, that the court did not already know.⁵⁰

60. Stanley's counsel already successfully swayed the sentencing judge to depart from the State's sentencing recommendation. Defense counsel eloquently presented mitigating evidence on Stanley's behalf and Stanley gave a good allocution statement. Stanley expressed his remorse, apologized, and accepted early responsibility for his actions.

⁴⁹ See, *State v. Williams*, 2014 WL 2536992, * 6-7 (Del.Super.), *affirmed*, 110 A.3d 550 (Del. 2015)(defendant cannot establish prejudice for not having submitted a mitigation expert report since his sad upbringing and dysfunctional family environment was already brought to the court's attention in the presentence report).

⁵⁰ *Id.*

61. It is not reasonably probable that the court would have imposed any lesser sentence under the circumstances. Prior to and at sentencing the court was aware of Stanley's previous convictions, read the psycho-forensic evaluation, and examined the mitigating factors with respect to the charges. The court considered the State's argument of continuing and escalating criminal conduct. Stanley's co-defendant in the car shooting case received the same four-year prison sentence that Stanley received and the co-defendant did not also plead guilty to two additional felony robbery charges as did Stanley. Stanley's allocution statement and trial counsel's presentation highlighted Stanley's childhood, and emphasized the mitigating evidence on his behalf.

62. In *Harden v. State*, 180 A.3d 1037 (Del. 2018), the Delaware Supreme Court found the defendant's counsel to have rendered ineffective assistance at sentencing. If *Harden*⁵¹ is an example of how sentencings should not be handled, by contrast, this case is an example of how sentencings should be handled. In *Harden*, counsel had only recently been appointed to represent the defendant and only had a fleeting discussion with him on the day of sentencing.⁵² By contrast, in these three cases, counsel had represented the defendant from their inception, through pre-trial, plea and at sentencing.

⁵¹ *Harden v. State*, 180 A.3d 1037 (Del. 2018).

⁵² *Harden*, 180 A.3d at 1049.

Counsel had many discussions with Stanley and was fully acquainted with him.⁵³

63. In *Harden*, counsel requested that the court impose a sentence of less than the State's agreed upon recommendation without any support for the request. Counsel did not discuss any mitigating evidence on defendant's behalf. Counsel did not take the time necessary to develop a reasoned approach to the defendant's sentencing.⁵⁴ Here, counsel developed a reasoned approach to Stanley's sentencing. Counsel requested that the court impose a sentence of less than the State's agreed upon recommendation with a presentation highlighting mitigating evidence and making a plea for leniency. In *Harden*, during his allocution, the defendant did not show remorse or accept responsibility.⁵⁵ Here, during his allocution, Stanley showed remorse, apologized and accepted responsibility. In *Harden*, the court imposed a sentence in excess of the State's sentence recommendation. Here, the court imposed a sentence less than the State's sentence recommendation. In *Harden*, counsel was found ineffective in his handling of defendant's sentence. By contrast, here, counsel was not ineffective in his handling of Stanley's sentence.

⁵³ See, October 16, 2017 Plea Transcript, at pgs. 4-7; Affidavit of Trial Counsel in Response to Rule 61 Motion, at pg. 4.

⁵⁴ *Harden*, 180 A.3d at 1047-1049.

⁵⁵ *Harden*, 180 A.3d at 1050.


64. Stanley cannot establish that trial counsel's performance fell below an objective standard of reasonableness or that he was prejudiced in any way by trial counsel's representation at the sentencing hearing. Despite the State's request for a five-year prison term, under the terms of the plea agreement, the court departed from that recommendation, and sentenced Stanley to only a four-year prison term. The same four-year prison term as his co-defendant in the car shooting case. That co-defendant was not also facing two additional felony robbery charges, as was Stanley. The court's decision making was thorough, detailed and considered. Based on this record, it is not reasonably probable that Stanley would have been sentenced to less than four years.⁵⁶

65. Stanley's claims presented herein are procedurally barred, waived and without merit.

⁵⁶ See, *State v. Baynum*, 2018 WL 1896489, 7 (Del.Super.)(Although defendant has established error by counsel, he has not met his burden of demonstrating actual prejudice. It is not reasonably probable that the court would have imposed a lesser sentence under the circumstances); *Williams v. State*, 110 A.3d 550 (Del. 2015)(given the seriousness of defendant's criminal record and the presentence report that detailed his difficult childhood, there was no basis to conclude that there was a reasonable probability that defendant's 22 year sentence, which was well below the 103 years he could have received, would have been lesser if additional evidence was presented to the court.)

For all the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary
Benjamin S. Gifford, IV, Esquire